

**STATE OF CONNECTICUT  
PUBLIC UTILITIES REGULATORY AUTHORITY**

APPLICATION FOR APPROVAL : Docket No. 12-01-07  
OF HOLDING COMPANY :  
TRANSACTION INVOLVING :  
NORTHEAST UTILITIES AND :  
NSTAR : FEBRUARY 7, 2012

**JOINT MOTION OF THE ATTORNEY GENERAL OF THE STATE OF  
CONNECTICUT AND THE CONNECTICUT OFFICE OF CONSUMER  
COUNSEL TO CLARIFY THE SCOPE OF PROCEEDINGS**

George Jepsen, Attorney General of the State of Connecticut (“Attorney General”), and Elin Swanson Katz, Consumer Counsel, through the Connecticut Office of Consumer Counsel (“OCC”), hereby respectfully request that the Public Utilities Regulatory Authority (“PURA” or “Authority”)<sup>1</sup> clarify that the applicants in the present proceeding must demonstrate that the proposed merger is in the public interest in order to gain PURA approval as required by Conn. Gen. Stat. §§ 16-11 and 16-22.

**I. BACKGROUND**

On January 19, 2012, Northeast Utilities and NSTAR (“Applicants”) filed their Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR (“Application”) pursuant to Conn. Gen. Stat. § 16-47. Section 16-47(d) provides, in relevant part, that PURA:

shall investigate and hold a public hearing on the question of granting its approval with respect to any application made under subsection (b) or (c) of this section and thereafter may approve or disapprove any such application in whole or in part and upon such terms and conditions as it deems necessary or appropriate. . . . In each proceeding on a written application submitted under said subsection (b) or (c), the department shall, in a manner which treats all parties to the proceeding on an equal basis, take into consideration (1) the financial, technological and managerial suitability and responsibility of the applicant, (2) the ability of the gas,

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<sup>1</sup> PURA was formerly known as the Department of Public Utility Control (“DPUC” or “Department”).

electric, electric distribution, water, telephone or community antenna television company or holding company which is the subject of the application to provide safe, adequate and reliable service to the public through the company's plant, equipment and manner of operation if the application were to be approved . . . .

On January 30, 2012, PURA issued a Notice of Hearing. This Notice stated, in part, that “[p]ursuant to Conn. Gen. Stat. §§ 16-11 and 16-47 and Conn. Agencies. Regs. §§ 16-1-46 and 16-47-2,<sup>2</sup> the Authority will conduct a public hearing to review this matter in full.”

## **II. DISCUSSION**

Connecticut law and PURA precedent require the Authority to consider the public interest when evaluating the NU-NSTAR Application. Specifically, the Applicants must show that the proposed merger is in the public interest in order to gain PURA approval. PURA’s review in this case goes far beyond mere consideration of the Applicants’ financial, technological and managerial suitability and responsibility of the applicant as required by Conn. Gen. Stat. § 16-47. Section 16-47 is only part of a larger statutory scheme and must be read together with other relevant statutes.

Conn. Gen. Stat. § 16-11 requires the Authority to keep fully informed as to the manner of operations of all public service companies in the state and expressly requires PURA to read Conn. Gen. Stat. § 16-47 broadly. Specifically, § 16-11 states that the general purposes of §§ 16-11 and 16-47 (and certain other statutes within Title 16) “are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Department of Public Utility Control and to promote local

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<sup>2</sup> Conn. Agencies Regs. §§ 16-1-46 and 16-47-2 concern the form of the application filed in this proceeding and certain information that must be included in the application.

control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.”

In addition, Conn. Gen. Stat. § 16-22 requires the Applicants to demonstrate that the proposed merger is in the public interest. Section 16-22 provides that:

[a]t any hearing involving a rate or the transfer of ownership of assets or a franchise of a public service company, the burden of proving that said rate under consideration is just and reasonable or that said transfer of assets or franchise is in the public interest shall be on the public service company.

PURA, when known as the DPUC, routinely applied a public interest standard as required by Conn. Gen. Stat. § 16-22 when considering applications filed pursuant to § 16-47. In Docket No. 00-01-01, Joint Application of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Change of Control (“Docket No. 00-01-01”), the applicants filed their application pursuant to Conn. Gen. Stat. § 16-47. The Department nevertheless made clear that its review of a merger is not limited to the requirements of Conn. Gen. Stat. § 16-47. October 19, 2000 Final Decision in Docket No. 00-01-01, 17. Specifically, the DPUC held that “§ 16-22 demonstrates that the public interest is a factor in merger reviews, and further places the burden of proving that a merger is in the public interest squarely on the applicant.” Id.

The DPUC further stated in Docket No. 00-01-01 that:

[i]t is also important to note that the express terms of Conn. Gen. Stat. § 16-47 require that the Department take into consideration factors such as an applicant’s financial, technological and managerial suitability. Therefore, it is clear that an applicant’s financial, technological and managerial suitability is but one consideration, and that many others may play a role in the Department’s decision-making. As a hypothetical example, there could be repugnant aspects of an application that could render a merger not in the public interest, even though the applicant itself might be suitable.[] The Department reviews the instant application under this broad statutory construction.

Id. 17-18 (internal footnote omitted). In a footnote within the above quoted language, the DPUC further stated that it “finds support for this interpretation in the language of Conn. Gen. Stat. § 16-47, which requires the Department to approve or disapprove of the application (taking the Applicants’ suitability into consideration), not the applicant.” Id. at FN 6.

In Docket No. 10-07-09, Joint Application of UIL Holdings Corporation and Iberdrola USA, Inc. for Approval of a Change of Control of Connecticut Natural Gas and the Southern Connecticut Gas Company (“Docket No. 10-07-09”), the Department considered a merger application filed pursuant to Conn. Gen. Stat. § 16-47. In that case, the Department held that it:

must return to Conn. Gen. Stat. § 16-47[] to determine what the Applicants must prove and what the Department must consider. To use a shorthand, Conn. Gen. Stat. § 16-47 requires that UIL prove its financial, technical and managerial suitability and responsibility. In addition, while not mandated specifically by § 16-47, the Department will require that the Applicants must demonstrate that the public interest is served by a Department approval of its Application.

November 10, 2010 Final Decision in Docket No. 10-07-09, 9. Moreover, in a footnote internal to this quotation, the DPUC added that it must also refer to “Conn. Gen. Stat. § 16-11 that references Conn. Gen. Stat. § 16-47.” Id.

The DPUC more specifically noted in Docket No. 10-07-09 that it must consider Conn. Gen. Stat. § 16-22 and the public interest when reviewing applications filed pursuant to Conn. Gen. Stat. § 16-47. The Department stated that it:

recognizes its clear statutory responsibility to protect the public interest that is inherent in Title 16. The Department takes that responsibility seriously in all matters before it; including this one. The Department has consistently required that applicants in a contested proceeding bear the burden of proof pursuant to Conn. Gen. Stat. § 16-22. The Department fully relies on Conn. Gen. Stat. § 16-11 to keep fully informed of all public service companies and ensure the

Department's and state's full powers to regulate those public service companies. (Citations omitted). There is no meaningful debate on these points.

Id. at 7.

Further, in DPUC Docket No. 91-06-26 Part A, Joint Application for Approval of the Acquisition of New Canaan Water Company and Ridgefield Water Supply Company by Bridgeport Hydraulic Company, a Subsidiary of Aquarion Company ("Docket No. 91-06-26 Part A"), the DPUC considered a proposed transaction in which the Bridgeport Hydraulic Company ("BHC") and its parent company, Aquarion Water Company of Connecticut ("Aquarion"), would acquire 100 percent of the stock of two other water companies. The DPUC reviewed "the suitability of BHC to provide adequate service to the customers of NCWC and RWSC; the benefits of this transaction to the ratepayers and shareholders of NCWC and RWSC; and the impact of this transaction on the ratepayers of those companies and the ratepayers of BHC." June 30, 1993 Final Decision in Docket No. 91-06-26 Part A, 7. The Department further specifically stated that the burden of proof in that case was governed by Conn. Gen. Stat. § 16-22. Id. at 8.

Similarly, in DPUC Docket No. 02-01-02, Application of Birmingham Utilities for Approval to Establish a Holding Company ("Docket No. 02-01-02"), the DPUC reviewed an application to approve the creation of a holding company with its major subsidiary being a regulated utility company. As in this case, the transaction under consideration in Docket No. 02-01-02 was the change in the ownership of the holding company of an existing operating regulated utility. May 8, 2002 Final Decision in Docket No. 02-01-02, 2, 10. In addition, as in the present case, the application in Docket No. 02-01-02 was filed only under § 16-47, but, the DPUC nonetheless reviewed that application under Conn. Gen. Stat. §§ 16-47, 16-43 and 16-11 and explicitly stated that

that the burden of proof in that proceeding was governed by Conn. Gen. Stat. § 16-22. Id., 4. See also DPUC Docket No. 96-08-20, Application of the Plainville Water Company for Approval of Formation of a Holding Company.

Thus, both the statutory paradigm and regulatory precedent interpreting that statutory paradigm establish that a public interest standard must be applied in evaluating the present Application. The public interest, according to past DPUC decisions, incorporates at least two broad principles. First, the proposed merger or change of control must not impose additional costs on customers. Second, it must provide tangible benefits, such as rate reductions and improved service quality.

To the first principle, the Department stated in its November 28, 2007 Final Decision in Docket No. 07-08-03, Joint Application of Iberdrola, S.A. and Energy East Corporation for Approval of a Change of Control, 14-15, that costs required to complete a merger “should not be recovered from ratepayers. The Department will review CNG’s and Southern’s next rate cases and will exclude any acquisition related costs inadvertently included.” See also January 19, 2000 Final Decision in Docket No. 99-08-09, Joint Application of Energy East Corporation and CTG Resources, Inc. for Approval of a Change of Control, 18 (in which the DPUC has held that, “[t]he Department concurs with CNG's position that the transaction costs should not be recovered from ratepayers.”); September 20, 2006 Final Decision in Docket No. 06-06-21, Application of Connecticut Water Service, Inc. the Connecticut Water Company & South Coventry Water Supply Company, Inc. for a Change of Control of South Coventry Water And its Merger With and Into the Connecticut Water Company, 3 (in which the DPUC held that “[a] public water utility that voluntarily acquires another water system must have the financial

resources to fund or finance future capital improvements to the water systems and to purchase the water system using internally generated funds, or in a manner that does not adversely affect ratepayers.”); December 29, 1999 Final Decision in Docket No. 99-08-02, Joint Application of Northeast Utilities and Yankee Energy Systems, Inc., for Approval of a Change of Control, (in which the DPUC stated that it “has determined that transaction costs associated with the Merger shall not be borne by Yankee Gas ratepayers.”); and October 19, 2000 Final Decision in Docket No. 00-01-11, 67 (in which the DPUC held that it “must ensure that utility rates reflect only real costs. Further, the buying and selling of utilities could escalate rates without benefit to ratepayers”).

Second, the public interest requires that the proposed change of control or merger reduce costs to customers. In its January 19, 2000 Final Decision in Docket No. 99-08-09, Joint Application of Energy East Corporation and CTG Resources, Inc. for Approval of a Change of Control, 20, a proceeding which was conducted pursuant to Conn. Gen. Stat. § 16-47, the DPUC held that:

The Department is concerned that the Company’s claim of Merger benefits has not been quantified at this time. The Department concurs with OCC and believes ratepayers should benefit from synergies that accrue from the Merger. The Department will require the Applicants to identify and quantify the potential costs and benefits from the Merger and provide a proposed sharing of the benefits in CNG's next rate case.

(Emphasis added).

The Attorney General and OCC therefore respectfully request that PURA expressly clarify that the Authority will, as plainly required by Connecticut law and PURA precedent, protect the public interest in this proceeding by holding NU and NSTAR to their statutorily imposed burden of demonstrating that the proposed merger is in the public interest.

**WHEREFORE**, the Attorney General and Office of Consumer Counsel jointly request that PURA clarify that the scope of this proceeding includes consideration of whether the proposed merger is in the public interest. Specifically, the Applicants must demonstrate that the proposed merger is in the public interest in order to gain PURA approval as required by Conn. Gen. Stat. §§ 16-11 and 16-22.

Respectfully Submitted,

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Service is certified to all parties and interveners on this agency's service list.

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